

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 230 of 1994

in

SPECIAL CIVIL APPLICATION No 8494 of 1991

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

UNION OF INDIA

Versus

BHARATSING SHANABHAI PATEL

Appearance:

MR JC SHETH for Petitioners
MR GI DESAI for Respondent.

CORAM : THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

Date of decision: 04/09/96

ORAL JUDGEMENT

This appeal is instituted by the Union of India directed against the order of the learned Single Judge dt. 1st November 1993 whereby Special Civil Application instituted by the respondent was partly allowed. In that, order of removal of the petitioner from service was set aside and the appellant was directed to reinstate the respondent with continuity of service without benefit of backwages and further directed to award lesser penalty commensurate with the charges levelled against him.

The factual matrix is that the respondent was appointed in Railway Protection Force, Western Railway, Baroda Division as a Constable on 21st of October 1974. The petitioner was charged by a memorandum dt. 16th June 1990 that while he was discharging his duties between 1.30 and 4.30 hours, on 6th June 1990 he was negligent and careless, as a result of which there was a theft of 34 Zinc-ingots from Goods-shed at Platform no.2. In the inquiry held the respondent was found guilty of the charges made against him, with the result by an order dt. 28th September 1990, the respondent was removed from service. The respondent appealed but did not succeed with the result the order of removal was confirmed by the appellate authority on 8th May 1991.

The respondent challenged the order removing him from service and the appellate order of confirmation of removal, in Spl.C.A.No.8494 of 1991. The learned Single Judge found that regard being had to the gravity of the charges, the order of removal from service made against the respondent was harsh and at any rate not commensurate with the misconduct alleged and that is how, the learned Single Judge held that the respondent is liable to be reinstated in service and the punishment lesser than the removal was directed to be imposed upon him. At the same time, the learned Single Judge held that the respondent shall not be entitled for backwages.

Shri Sheth, learned counsel strenuously urged before us that the respondent belongs to a disciplined force and when as a result of the negligence of the respondent railway authorities lost 34 zinc-ingots of the value of Rs.44,000/-, the learned Single Judge ought not to have interfered with the order of removal. He also contended that the respondent's conduct ought to have been viewed seriously and cannot be let off on lighter punishment.

The fact remains that the respondent was charged for misconduct and in that omission to be more vigilant or careful. Indeed he is not directly or indirectly

charged for having committed any theft nor for that matter for having assisted the thieves who committed the offence in relation to 34 zinc ingots. This being the position, in our judgment, view taken by the learned Single Judge that penalty for removal is harsh and onerous looking to the gravity of the misconduct seems to be justified. The learned Judge has rightly held that the respondent ought not to be given benefit of backwages. We are, therefore, unable to interfere with the impugned order. In the circumstances, no grievance survives in this appeal and the appeal is liable to be rejected. However, in our view, direction must go to the Disciplinary authority of the respondent to award appropriate penalty in accordance with the rules and regulations for the misconduct alleged and held proved against the respondents within a period of six weeks from the receipt of the writ of this court. Needless to say that once the penalty is decided upon and communicated to the respondent, the same should follow order of reinstatement. The appeal is dismissed. No order as to costs.

Dt. 4.9.1996. (G.D.KAMAT C.J.)

(C.K.THAKKER J.)